

MEMORANDUM

Re: Impact of the conflict of interest statutes on  
the members and staff of the Commission to Re-  
port upon the Assassination of President John F.  
Kennedy.

The Commission appointed by President Johnson to report upon the assassination of President Kennedy (Executive Order 11130 of November 29, 1963, 28 F.R. 12789) is composed in part of individuals not regularly employed in Government. The staff of the Commission is headed by a lawyer from private practice. It is the purpose of this memorandum to explain how the conflict of interest laws apply to these individuals and to others working in private fields who have been or may be recruited for the staff.\*

The conflict of interest statutes (18 U.S.C. 202-209) distinguish between regular officers and employees of the Government and a category of officers and employees designated in 18 U.S.C. 202 as "special Government employees." This category includes, among others, officers and employees of Government agencies who are appointed or employed to serve, with or without compensation, for not more than 130 days during any period of 365 consecutive days either on a full-time or intermittent basis. Special Government employees are excepted from certain of the prohibitions imposed upon regular employees.

Since the Commission is an agency of the Government, the two appointees from private life, Mr. Allen W. Dulles and Mr. John J. McCloy, together with Mr. J. Lee Rankin and other members of the Commission's staff who are drawn from private life, have come within the coverage of the conflicts of interest statutes. As a practical matter, however, the functions of the

\* The status of the Chief Justice and the four Congressional members of the Commission under the conflict of interest laws has not been changed by their appointments to the Commission. The same is true of the status of any staff members obtained on loan from Government agencies.

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Commission are such that the only prohibitions which may affect these individuals by reason of their service therewith are the ones in sections 203 and 205 of Title 18.\*\* These sections in combination prevent a regular officer or employee of the Government, except in the discharge of his official duties, from representing another person before any department, agency or court, whether with or without compensation, in a matter in which the United States is a party or has a direct and substantial interest. As applied to a special Government employee, these sections prevent him from representing another person before a department, agency or court only (1) in matters in which he has participated personally and substantially in his governmental capacity, and (2) under certain circumstances, in any matter pending before the agency he serves.

Thus, if they were regular officers or employees, Messrs. Dulles and McCloy and staff members from outside the Government would be prevented from engaging in legal or other representation of their clients, employers or other persons before Government agencies or courts in any matter in which the Government is a party or has an interest. If they are special Government employees, however, the restrictions of section 203 or 205 invoked by their Commission service are of no real concern to them because those restrictions will not preclude representational activities on their part before any agencies or bodies other than the Commission.

A Presidential Memorandum of May 2, 1963, entitled "Preventing Conflicts of Interest on the part of Special Government Employees" (28 F.R. 4539), lays down Government-wide rules for determining whether an individual who serves temporarily or intermittently is a regular or special Government employee and thus subject to the full or limited prohibitions.

\*\* Section 204 applies only to Members of Congress and section 206, to retired officers of the uniformed services. Section 207 contains post-employment restrictions against representation by a former officer or employee of other persons in matters in which he participated as a Government official. Section 208 prohibits an officer or employee of the Government from participating as such in any matter in which he has a financial interest. Section 209, which applies only to a regular officer or employee, prohibits him from receiving any payments from a private source as compensation for his services to the Government.

of sections 203 and 205. These rules require that the agency which obtains or utilizes the services of the individual shall, at the time of his appointment, make an estimate of the number of days during the following 365 on which it will require his services. If the estimate is that he will serve no more than 130 days in all, whether consecutively or in a combination of intermittent periods, he is carried by the agency as a special Government employee. If the estimate ultimately proves to be inaccurate, he is nevertheless deemed to continue in the status of a special or regular Government employee, as the case may be, for the full 365 day period for which the estimate was made.

Whether or not the Commission takes the whole of the year following its establishment to complete its task, it seems improbable that the members themselves will perform duties on more than 130 different days during that year. It is obviously idle for anyone not familiar with the plans of the Commission even to conjecture whether any members of its staff who are not regularly employed by the Government are likely to serve in excess of the 130 day standard. At any rate, the estimates of the service of Messrs. Dulles and McCloy would seem to be a responsibility of the White House. The Commission itself is responsible for the estimates as to the service of members of its staff.

DRAFT BILL

To designate as special Government employees for purposes of the conflict of interest statutes those individuals appointed from private life as members of the Commission to Report upon the Assassination of President John F. Kennedy, or as members of the Commission's staff.

Public Law \_\_\_\_ (\_\_\_\_ Stat. \_\_\_\_ ) is amended by adding the following paragraph at the end thereof:

"(f) An individual appointed from private life as a member of the Commission or of the Commission's staff shall be a special Government employee for the purposes of sections 203, 205, 207, 208 and 209 of Title 18, United States Code, notwithstanding anything in the provisions of section 202 thereof to the contrary."

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